

7/7/2014

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
JUL 07 2014
DEPARTMENT OF
WATER RESOURCES

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

I. Matter being protested

AMENDED THIRD MITIGATION PLAN AND REQUEST FOR A HEARING
SUBMITTED BY THE IDAHO GROUND WATER APPROPRIATORS, INC. (IGWA)
IN RESPONSE TO THE RANGEN INC. WATER DELIVERY CALL (TO MITIGATE
MATERIAL INJURY TO WATER RIGHT NOS. 36-02551 & 36-07694 HELD BY
RANGEN, INC., AND OTHER WATER RIGHTS IN WATER DISTRICT 36A); IDWR
Docket No. CM-MP-2014-005

2. Name of protestant:
RUTH MUSSER-LOPEZ
3. Protestant's Representative for service (If different than protestant)
RUTH MUSSER-LOPEZ, in pro per (representing self).
4. Service mailing address
Ruth Musser-Lopez
420 E. Street,
Needles, CA 92363
5. Service telephone no. 760 885-9374
Email Address: RUTH@RiverAHA.org
6. Basis of protest (including statement of facts and law upon which the protest is based)

As a named beneficiary and heir of the Alvin and Hope Musser Trust, dated September 21, 1990, hereafter "Musser Trust," I have an interest in historic water and property rights dating from April 1, 1892 held by the Musser Trust. The property is located within Idaho water district 36A. One particular water right that the Musser Trust holds is for use of spring water located at the Martin-Curran tunnel, specifically water right #36-102, which has been in the past and continues to be directly and adversely impacted by the Rangen's junior use of the water at that spring for domestic and commercial use. That water source has also been adversely impacted by direct interception from water mining and pumping activity by holders of junior water rights on the north side of the Snake River above the "Snake Plain Aquifer" supplying the Martin-Curran tunnel, who will hereafter be referred to as the "Northside Pumpers" or their representative corporation, the "Idaho Ground Water Appropriators," hereafter abbreviated as "IGWA."

The springs which supply the Musser Trust water right #36-102 at the Martin-Curran Tunnel as well as two other water rights #36-10293 and #36-116 are tributary to the Snake River and are hydrologically interconnected to the Snake Plain Aquifer of which, under the Idaho State Constitution's doctrine of prior appropriation, are senior water rights since this water was appropriated prior to the water appropriated to the

Rangens and other water right holders such the North Side Pumpers and those represented by the IGWA.

The Musser Trust will be directly and adversely impacted by the current Rangen use of water and more so should the so-called “mitigation” plans proposed by the IGWA in their “Third Mitigation Plan” be implemented in response to the Rangen’s “call for delivery of water” referenced in IDWR Docket No. CM-MP-2014-005. The mitigation plans that IGWA proposes does nothing to restore or replenish the Musser Trust’s water at the Curran-Martin tunnel which are currently exhausted but instead if implemented would constitute a confiscation, heist and government take of Musser Trust’s water and property while engorging IGWA and the Northside Pumpers, holders of junior water rights), with a portfolio of assets and new water credits.

IGWA via the State of Idaho would greedily and hostilely, via this plan, force “actions” which are adverse to senior water right holders, specifically the Musser Trust, in order to give IGWA “credit” for mitigation, and thereby skirt IGWA’s responsibility to comply with the Director’s curtailment orders which are his legal responsibility. The mitigation proposed, if implemented, would constitute a government take of highly valuable, privately held, real property, riparian in nature, and the take of water and property that I have an interest in via the Musser Trust. Said, water right which the Musser Trust has an interest in are senior to the Rangens and should not be taken from the Musser Trust to satisfy the Rangens or other junior water right holders.

Instead of this ill-advised “Third Mitigation Plan,” the IGWA and the Rangens need to restore the water to which the Musser Trust is being deprived at the Martin-Curran Tunnel and the water from the springs to which the Mussers are entitled to first.

Facts surrounding my objection. I have knowledge and reason to believe that I am a beneficiary of the The ALVIN & HOPE MUSSER LIVING TRUST dated September 21, 1990, (hereafter “Musser Trust”) is the owner of real property in Gooding County, Idaho, which has appurtenant to it a decreed right of 4.8 cubic feet per second (cfs) of water from Martin-Curran Tunnel for irrigation, stockwater and domestic use,

The Musser Trust property is leased for farm purposes and some of the land, but not all, is in irrigation, now deriving some irrigation water from the North Side Canal via the Sandy Ponds and pipeline. The Musser Trust never approved that “mitigation plan”, nor were they given notice of the plan or the right to object, nor have they ever agreed to forego their rights to the clear spring water to which they are entitled from the Martin-Curren Tunnel in exchange for the re-cycled, likely herbicide-laden, pesticide-laden and chemically altered (chemical fertilizers) waste water delivered to their pump vault via the canal. At one time, the Musser Trust was able to use gravity to get water to the crops, but currently has been paying for electricity to pump waste run off water to the fields.

The Howard and Rhonda Morris party, and the Michael and Judy Musser party (who I am informed also have their own “Musser Trust” different than the Alvin and hope Musser Trust), lease some of the Musser Trust property and farm or ranch it but they have no authority over the Alvin and Hope Musser Trust water rights either individually or together. However, I have reason to believe that the Morris Party and possibly the Michael Musser party, either individually or together are members or are in conjunction with the IGWA which has asserted in its corporate papers that “It’s understood” that the Musser Trust will receive no Curren Tunnel water rights into their

vault. But the Musser Trust has no such understanding and in fact the pipes are turned on from the Curren Tunnel when the water is available. I have knowledge and believe that the Musser Trust has the following decreed rights:

Number	Source	Priority	Quantity	Status	Use
36-10290	Grdwater	1/1/1960	0.04 cfs	Decreed	Domestic
36-10291	Grdwater	4/1/1972	0.04 cfs	Decreed	Domestic
36-10293	Spring	4/1/1886	.88 cfs,	Decreed	Irrigation, stock
36-102	Curren Tunnel	4/1/1892	4.10 cfs,	Decreed	Irrig,stock,domestic
36-116	Hoagland Tunnel	12/12/1901	1.14 cfs	Decreed	Irrigation

The Musser Trust property has been planted with corn for silage, alfalfa, wheat and potatoes at various times, and perhaps farming will remain the primary use for the water appurtenant to their property. But the property has a legally-filed subdivision for about 20 lots located on the southwestern corner of the property overlooking the wildlife management area, with the plat map recorded in December 1979 (Hunter Point Subdivision), and it may well be that in the future the spring water from the tunnel, to which the Musser Trust is entitled will be needed for domestic purposes.

Without limitation to my right to amend, I OBJECT TO and hereby PROTEST each of the groundwater pumpers’ multiple components to their amended plan:

I OBJECT TO and PROTEST the misleading proposed Measuring Devices scheme designed to provide Mitigation Credit to IGWA:

IGWA says the North Side Canal Company is delivering water to Sandy Ponds, owned by one of the ground water districts, and that water discharged into the Sandy Ponds goes via the Sandy Pipeline into the vault that is used by Butch Morris to irrigate his property and property he leases from the Musser Trust. They say that water is a substitute for water that is no longer available from the Hoagland Tunnel and Curran Tunnel and Billingsley Creek, where Mussers have decreed rights. They admit that historically one pipeline conveyed water from Curran tunnel into the vault, but say “it is understood” that the pipe will no longer feed water from Curran Tunnel into the vault. I do not agree and object to this misrepresentation.

I assert that the water from the canal is of inferior quality to spring and tunnel water. The Musser Trust is unable to grow organic crops or supply its domestic needs using that waste water full of unknown chemicals and fertilizers, pesticides, etc. I have knowledge and believe that the Musser Trust never agreed to this substitution, never gave up their superior rights to the Curran Tunnel water, and have no guarantee that the canal water will be available permanently and have entered no agreements respecting the canal water use.

I object to the IGWA’s proposed calculation by which they would receive “credit” for the percolation they claim takes place under the Sandy pond and other ponds, and recharges the aquifer. Their method would be to install measuring devices to determine how much water goes into the 44-acre pond, and how much goes out, minus the evaporation, which they would then, hypothetically, be given credit for any difference, which would be considered “recharge. ” First, I object to the IGWA proposal that they would be in charge of making the measurements with the devices that they propose to

install. In other words, I object to the IGWA being the measurer. Second, I object to allowing the IGWA to use these proposed credits as mitigation to relieve the IGWA from the responsibility of restoring sufficient clean water which they have deprived the Mussers of by over-pumping of the aquifer. Third, I object to the proposed credits because it does nothing to restore the water that the Rangens' fish hatchery is missing, and it does not adequately compensate the Mussers for the loss of the pure spring water to which they are entitled from their spring and the Curran Tunnel—all it does is put an air of legitimacy to the IGWA's current purloiner of taking clean water from senior water right holders and returning to them dirty, contaminated waste water which is costly for the senior water right holders to pump.

I OBJECT TO AND PROTEST THE “Deepen, Widen, Lower Elevation of the Curran Tunnel to increase water to Rangens” PLAN.

Based upon a speculation of finding water, the IGWA plan to “deepen, widen, and lower the elevation of the Curran Tunnel” assumes that IGWA can come onto private property and mine for water while undermining an existing water source which has supplied water since the 1890s. This proposal to destructively alter a historic water source was made by IGWA so they don't have to curtail their water mining activity junior to both the Rangens and Mussers which has resulted in over-pumping and depletion of the water that feeds that spring that supplies the tunnel. It further disregards altogether the Musser Trust's senior rights, indicating their intention to make the tunnel supply more water for Rangens, by taking the water rights of the Musser Trust as though the Musser Trust water rights is of no consequence. IGWA asserts that if the Rangens won't give them access and let IGWA do this, then IGWA should be freed of their responsibility to restore the water Rangens are being deprived of from the Curran Tunnel. I object to this illogical conclusion and the IGWA plan for numerous reasons.

First, undermining the Curran Tunnel with other water capturing tunnels would in all likelihood forever eliminate the possibility of restoring the Curran Tunnel. Dropping the level of the water flow at the source point will result in the need for more electricity to pump water to the Musser Trust property from the Curran Tunnel.

Second, the riparian area which the family members involved in the Musser Trust enjoy around the spring and Curran Tunnel would be adversely impacted by water mining should this plan be approved.

I OBJECT TO and PROTEST the IGWA “Direct Delivery” PLAN: Take water from Billingsley Creek and pump it up to Rangens:

IGWA says they have applied for Permit No. 36-16976 to give them the right to take water directly out of Billingsley Creek and pump it up to Rangens by use of a hydraulic pump at the headgate. IGWA absurdly asserts that they should get mitigation credits for taking Billingsley Creek water that does not belong to them and pumping the water back to the Rangens. Though the Director previously said this plan is speculative, they responded saying they are only asking for credit for water they actually deliver and then propose to have the government take Musser Trust land by eminent domain and give the water rights from this stolen land to them so that they can then have the right to the water which they would pump back to the Rangens and get “credit” for. I object to this proposal as implementing it would constitute full -scale thievery with the government

unfairly seizing the property from one and giving that property to another. The IGWA has no right to this land or the water. There is no legal basis upon which a permit could be issued to the IGWA to allow them to purloin the creek water for their own benefit of obtaining credits and I strongly object to this plan which I consider illegal, harassing and causing undue consternation and unhappiness, a violation of my constitutional right, just to read about this bullyish act. I strongly object to the use of eminent domain to take the Musser Trust rights to the riparian land and give it to a private corporation for private purposes (so that IGWA can establish the right to use the creek water).

Think about it: the government takes property from A who is currently using it, to give to B so that B can own it and use it---that is a violation of the U. S. Constitution and is a government take of private property. We are supposed to be secure in our property.

I OBJECT TO and PROTEST the “Recirculation of Rangens’ Water Rights” plan.

I object to the issuance of permits to IGWA in conjunction with the Rangens for “pump back” operations on Billingsley Creek for fish propagation. Without any kind of agreement or permission from the Musser Trust, the IGWA proposes to build a pump facility and possibly a treatment plant on either Rangens’ or Mussers’ riparian property on prime valuable property at the corner of Billingsley Creek and the state highway for the purpose of pumping the creek back to the Rangens. For that they say they need a half acre parcel of land for the pump house and possibly a treatment plant. I object to the IGWA plan to pay the cost of delivering water to Rangens’ Fish Hatchery by taking property from the Musser Trust. I object to the IGWA plan to pay the cost of delivering water to Rangens’ Fish Hatchery by eliminating the flow of water down the creek.

I further object to IGWA’s assertion that should the Rangens not agree to the pump back scheme by allowing IGWA on the property to install a pump, then IGWA would be relieved of their mitigation obligation. The Billingsly Creek has flowed through Mussers property for generations and is a valuable asset that adds value to the Musser Trust land. IGWA would take prime Musser Trust real estate and creek water in their greed to avoid the necessity of restoring spring water to the Curran Tunnel where both Mussers and Rangens historically derived their clean water.

In short, IGWA in their haste and greed, is wanton to steal both the Musser Trust decreed water rights, their riparian property, the inherent value of the scenic qualities of the creek, the moisture that the creek puts into the surrounding ground bearing through the Musser Trust property and wants the Director to endorse and approve these acts by granting them permits to do so, as well as to sanction use of eminent domain to accomplish this, and give them mitigation credit for so doing—I object.

Further, they plan to dump solids from the treatment plant sludge, right back into the Billingsley Creek, so the downstream users can have their water supply polluted. I object to IGWA’s biased subjective determination that pump back intensive water use and reuse “will not have an adverse effect upon downstream water rights” since fish propagation is what they term a “non-consumptive use of water.” The IGWA is not qualified to make this determination and the statement should be struck. Fish farms boil down to “Animal Feeding Operations” and produce intensive waste just like any other type of “feed lot.” I object and protest the IGWA’s unfounded assertions as to the environmental soundness of their proposals; IGWA’s conclusions are unsupportable by

the scientific method and appear to be motivated by corporate greed and criminal in their very conception.

I OBJECT TO and PROTEST the “Aqua Life Project” plan.

I strongly object to the third amended mitigation plan component which would allow IGWA to privatize now public water rights and assets at Big Springs held by the State of Idaho, for the Aqua Life Hatchery. The “Aqua Life Project Plan” entails designing and constructing a pump station and pipeline to transport the water from Aqua Life to Rangens and acquiring easements for the pump station and pipes, and permits from Rangens to access their property for engineering, designing and construction.

Once again involving the Musser Trust, the Musser Trust property is located between the source of this desired water and the Rangens property. I also object to this component of the plan because, it does nothing to replenish the water that has been stolen from the Musser Trust via depletion at the Martin-Curran Tunnel by over pumping from above by the IGWA. I object to the plan because IGWA has not demonstrated that they should be entitled to the water at the state-owned hatchery or entitled to acquire purchase that clean water to serve just one user, when there are many other surface users with superior rights to Rangens’ who have been deprived of their water, clean water.

I object to this plan because the effect upon the Musser Trust well water and aquifer of pumping down the water at this state hatchery spring is unknown. It is likely that intensive pumping at this spring will draw down the aquifer and the springs above.

I also object to this plan because the dedication of water to the Rangens via a permanent pipe does not restore the Musser Trust water and only threatens its water supplies all the more. The IGWA propose to cut through the Musser Trust land with their pipeline. I have knowledge and reason to believe that the Musser Trust will not permit such usage and that the IGWA’s vain response to the Musser Trust was Idaho Code § 42-5224 (13), eminent domain and total disdain for the landowners’ Constitutional prior rights. I object to any attempt by the State with the IGWA to use the power of eminent domain for the purpose of a water line installation to take water, not to the Mussers, but to the Rangens. This pump and pipe proposal will simply heist more water out from under the Musser-Trust property.

I object to and protest this and all of the elements of the IGWA’s audacious plan to avoid the Director’s curtailment orders by these proposed “mitigation” measures. The IGWA proposal to use our water to satisfy the needs of the Rangens would be a violation of state constitutional law.

7. What would resolve your protest?

A) The Director of the Department of Water Resources, State of Idaho, should perform his duty to CURTAIL THE OVERPUMPING BY THE GROUND WATER APPROPRIATORS. More curtailment is necessary, not less.

B) To resolve this protest, the IGWA’s Amended Third Mitigation Plan should be denied in its entirety.

C) To resolve this protest, the IGWA, a corporation which can and should have ethical standards, can also have, like other corporations that the Supreme Court recently held can have religious moral values, should muster up some ethical, moral and religious values like respecting the rights of others, not steal or threaten to steal, understand the concept of greed, and perhaps be a little neighborly and talk to their neighbors before

trying to implement plans using government force that involve the take of their neighbor's property. I ask the Director of the Department of Water Resources, State of Idaho to please provide me with timely notification by certified mail of any future proposals and hearings to be held with regard to this plan or any future plans that involve the Musser Trust property.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 7th day of July, 2014.



Protestant Ruth Arlene Musser-Lopez

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2014, I served a true and correct copy of

RUTH MUSSER-LOPEZ'S AMENDED THIRD MITIGATION PLAN AND REQUEST FOR A HEARING SUBMITTED BY THE IDAHO GROUND WATER APPROPRIATORS, INC. (IGWA) IN RESPONSE TO THE RANGEN INC. WATER DELIVERY CALL (TO MITIGATE MATERIAL INJURY TO WATER RIGHT NOS. 36-02551 & 36-07694 HELD BY RANGEN, INC., AND OTHER WATER RIGHTS IN WATER DISTRICT 36A), IDWR Docket No. CM-MP-2014-005,

On the persons listed below by the method indicated.

State of Idaho
Department of Water Resources
322 East Front Street
~~P. O. Box 83720~~
Boise, ID 83720-0098
Attn.: Gary Spackman, Director

Personal Delivery

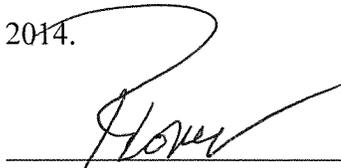
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I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed at Boise, Idaho, on July 7, 2014.



Ruth Musser-Lopez

Idaho Department of Water Resources Receipt

Receipt ID: C099135

Payment Amount \$25.00 Date Received 7/7/2014 4:34 PM Region STATE

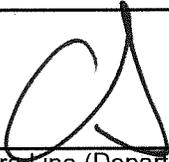
Payment Type Cash

Payer MUSSER-LOPEZ, RUTH

Comments PROTEST REGARDING IGWA'S 3RD MITIGATION PLAN FOR RUTH MUSSER-LOPEZ

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	PROTESTS	56103	0229	21		1155



Signature Line (Department Representative)